

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
BENCH AT AURANGABAD

WRIT PETITION NO.5887 OF 2017

Brijraj Bhavarilalji Sanghavi And Another Petitioners

Versus

Amrutraj Bhavarilalji Sanghavi And Others Respondents

Mr. S.S. Kazi, Advocate for the petitioners.

Mr. R.S. Wani, Advocate for respondents No. 1A to 1D.

Miss. Harshita Manglani, Advocate for respondent No. 2.

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[CORAM : NITIN B. SURYAWANSHI, J.]

DATE : 20th JUNE, 2023

ORDER :

1. By this petition filed under Article 227 of the Constitution of India, petitioners challenge the order passed by 6th Joint Civil Judge, Senior Division, Jalna, below Exhibit-88 in Regular Civil Suit No. 244/2013, thereby dismissing the application filed by the petitioners/plaintiffs under Order 6 Rule 17 of Code of Civil Procedure.

2. Petitioners/plaintiffs filed suit for partition, separate possession and injunction in respect of suit properties. In the suit, after plaintiffs filed their affidavit in lieu of examination-in-chief, petitioner moved application Exhibit-88 seeking

amendment in the plaint contending that some properties i.e. agricultural land bearing Gat No. 11, admeasuring 7 Hectare 44 Are, situated at village Rajegaon, Taluka- Ghansawangi, District- Jalna, and one open plot bearing City Survey No. 307, admeasuring 207.7 Square Meters, situated at village Ghansawangi, District- Jalna, are remained to be mentioned in the plaint. The application was opposed by the defendants by filing a detail say. The Trial Court has rejected the application by imposing cost of RS. 5,000/- on the petitioners. Hence, the present petition.

3. Heard the learned advocate for the petitioners and learned advocates for respondents. Perused the memo of writ petition, annexures thereto and the impugned order.

4. It is a matter of record that defendants in their written statement have admitted that land Gut No. 11, admeasuring 7 Hectare 31 Are was given in equal share to plaintiff No. 1, father of plaintiff No. 2 and defendant No. 1. It is further admitted that ancestral house no. 307, at Ghansawangi, was given in the share of Plaintiff No. 1 and father of Plaintiff No. 2. In view of these admission, Trial Court rejected the application of the petitioner holding that defendants admitted ownership of

the plaintiffs in Gut No. 11 and house property and therefore said properties need not be added in the suit. The plaintiffs have not claimed any specific share in the suit property and the defendants have claimed that said land is already partitioned.

5. The defendants have also admitted that in House No. 307, Ghansawangi, the plaintiff No. 1 and father of plaintiff No. 2 have been allotted 50% share each. In view of these admission, the Trial Court is justified in rejecting the application of the petitioner seeking inclusion of these properties in the suit. There is no illegality or perversity in the orders impugned in the present petition. The writ petition being devoid of merit is dismissed.

6. Considering the fact that the suit is of the year 2013, trial is expedited.

[NITIN B. SURYAWANSHI, J.]